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Ruth Milkman and Eileen Appelbaum, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy*

Cornell University Press, Ithaca and London, 2013

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REFERENCES

MILKMAN, Ruth and Eileen APPELBAUM, *Unfinished Business: Paid Family Leave in California and the Future of U.S. Work-Family Policy*, Cornell University Press, Ithaca and London, 2013, 168 pages, ISBN 978-0-8014-5238-3, \$19.95 (paperback).

- 1 There is no universal paid maternity leave in the United States. The country is an outlier compared to the rest of the world in this area. The absence of family benefits in the broadest sense (which would include family allowances and free public child care) is due to the same set of institutional, political, racial, and cultural factors that have shaped the ungenerous American welfare state, but it also reflects the American ideology of the family as a private sphere, in contrast to the pro-natalist stance adopted by several European countries at the turn of the 20th century. As for maternity leave, it is also the result of policy choices made in the 70s which have set the U.S. on a very different path from Europe's for gender and workplace policies. The *special treatment vs. equal treatment* concept, which was at the core of the debate that led to passage of the Pregnancy Discrimination Act of 1978 and to a lesser degree the Family and Medical Leave Act of 1993, framed the issue in terms of civil rights and gender equality, not as a narrowly targeted benefit or as an expansion of the welfare state. A national maternity leave bill could have been negotiated as a limited benefit and would probably have passed more easily than the more broadly defined FMLA, but the women's

organizations which took an active part in this debate were determined to eliminate any specific reference to gender for fear this would lead to discrimination in hiring.

- 2 The FMLA, passed after an eight-year campaign waged by women's groups and unions and despite two presidential vetoes, did represent a major achievement for families. However, the concessions that had to be made to win its passage severely limit its scope and reinforce class and gender inequalities.¹ If, according to the Department of Labor's 2012 survey, 59% of the workforce is both covered and eligible, 44% of employees in the private sector are ineligible, and the absence of wage replacement severely penalizes low-income workers and single-parent families who are more likely than others to forego leave. That same year, only half of all new mothers had access to paid time off of any kind upon the birth of their first child.
- 3 If no major progress has been achieved at the federal level since the landmark act, there has been a surge of state initiatives since the late 90s to improve on the provisions of the FMLA and to try and pass paid leave laws. California led the way in 2002. *Unfinished Business*, by sociologist Ruth Milkman, an expert on labor movements at CUNY, and Eileen Appelbaum, an economist at the Center for Economic and Policy Research, provides a well-documented, illuminating account of the genesis, passage, and implementation of the nation's first paid family leave program. Drawing upon several original surveys, the authors document the mostly positive impact of the ten-year law on employers and workers, analyze its weaknesses, and conclude with its implications for a national program.
- 4 The book's introduction clearly sets out the dramatic social, economic, and demographic changes which explain the need to update workplace policies in order to reduce work-family conflict as well as class and gender inequalities: the shift from the prevailing breadwinner/homemaker model to the far more frequent dual earner/single parent family, with record numbers of women in the labor market; the rising need for elder care with the aging of the American population; the increasing number of men wishing to be involved in family caregiving. One positive element is that, according to several nationwide surveys, paid family leave and paid sick days (there is currently no national legislation on mandated sick time) are popular issues across the political spectrum. However, in America's largely employment based social protection system, paid time off has met with unbending opposition from business, which, as it did in their decade-long fight against universal health insurance, does not reject it *per se*, but favors a voluntary approach, hoping to attract and retain the best workers.
- 5 The authors go on to retrace the evolution of work-family legislation in California from the post-war period until the late 1990s and shed historical perspective on the campaign that led to the 2002 legislation.
- 6 California has been progressive in that area. Notably, in 1946 it was the second state to adopt a Temporary Disability Insurance Program (TDI) providing workers with 6 weeks of partially paid leave financed by a payroll tax. Pregnancy-related coverage was added after adoption of the Pregnancy Discrimination Act.² In 1978, legislation guaranteeing up to four months of job protected (unpaid) maternity leave was adopted. And California adopted its own version of the FMLA a year ahead of the federal program. But beyond the state's family friendly tradition, the successful outcome of its paid leave campaign resulted from the interplay of several factors: careful preparation ensuring the financial feasibility and credibility of the new program, which would build upon a pre-existing, popular and efficient structure (the TDI system); a collaborative effort

involving the creation of a broad-based coalition including labor unions (which played a major role in the policy process), advocacy organizations, women's groups, and various community organizations. Reaching out to the media, educating the public, and framing the issue as addressing the critical health and economic needs of American families also paid off. Advocates also benefited from a political window of opportunity in a critical reelection year for Democratic Governor Davis, who was courting the voices of his electoral base. Compromise also contributed to the success of the campaign as concessions were made to appease business hostility. Employer participation, initially planned, had to be eliminated, and the number of weeks was cut back from 12 to 6.

- 7 The program, which was sponsored in the General Assembly by Democratic State Senator Sheila Kuehl and went into force in July 2004, provides eligible male/female workers with six weeks of PFL per year for bonding with a new child or a seriously ill family member. It is almost universal since it covers all private and non-profit workers regardless of the size of the firm and does not require continuous employment with the same firm. Employees receive up to 55% of their weekly wages. The program is financed by an employee payroll tax and is administered by California's Employment Development Department, together with the TDI program.
- 8 As is often the case in complex social policy areas, if adopting the law was the most visible challenge, implementing it has turned out to be fraught with a more subtle set of issues to resolve. In Chapters 3 and 4, Milkman and Appelbaum draw upon the results of four original surveys they carried out in 2004 and 2009, supplemented with recent state data, to analyze the impact of the program on workers and employers. Regarding the former, the most salient conclusion to emerge is that, several years into the program, take-up rates have been lower than anticipated, and low-income residents who stand to gain the most from this program, since they rarely enjoy employer-provided leave, are underrepresented among claimants. The authors cite three main reasons: limited awareness of the program (22% of respondents knew of its existence in 2003, 43% in 2011); lack of job protection for employees not covered by FMLA, and the low level of wage replacement. Another reason is the difficulty both employers and workers have navigating the complex maze of overlapping public and private work-family programs. On the positive side, the launch of PFL went relatively smoothly despite the 2004 budget crisis, given the pre-existing TDI structure. Most importantly, over the years PFL has contributed to cultural change and the reduction of gender inequality, with an increasing number of men taking bonding leaves (male bonding claims rose from 17% in 2004 to 29.2% in 2012).
- 9 Documenting the impact of PFL on employers is of particular relevance for future campaigns, since business opposition was the main roadblock thrown in the path of advocates in the weeks before passage of the bill. The authors use quantitative data collected during two surveys of California businesses in 2004 and 2010; a second set of data emerges from a series of interviews of human resources managers at selected firms in the same years. The responses provide evidence that the cost increases and the widespread fraud and abuse predicted by powerful, well-financed trade groups like the Chamber of Commerce and the National Federation of Independent Business were unwarranted. Companies have incurred little or no additional costs related to replacing leave-takers and faced few problems navigating the PFL law. Those employers who provided paid leave even enjoyed cost savings by coordinating their benefits with the state program. The positive effect on employee morale and productivity was also noted.

Actually, the Milkman and Appelbaum Survey of the California program corroborates the findings of a number of surveys of private work-family programs carried out by the Families and Work Institute in the 1990s, when private firms such as Johnson and Johnson started offering such programs to attract and retain valuable employees: companies actually benefit from greater job satisfaction, which translates into lower turnover and improved performance.

- 10 However, the case of the California PFL program illustrates the limits of universality as a social equalizer. Although, contrary to many other elements of the safety net, it is unconditional and accessible to all families, the program leaves out some of those it would benefit the most: low-wage workers who rarely, if ever enjoy employer provided paid leave. Chapter 5 of the book focuses on the unintended, unexpected consequences of a program that maintains inequalities in access to paid leave instead of reducing them, discussing in more detail the results of the field surveys mentioned earlier as well as two screening surveys of potential beneficiaries, in 2004 and 2010. Data show that workers in “high-quality” jobs (more than \$20/hour + benefits)—most of whom already enjoyed some amount of paid time off—were more likely to be aware of the program, and had been more numerous to access it than low-wage workers. The reason is that employers who provide paid leave have an economic incentive to inform their employees of the benefit. But awareness remains lower among low-income workers, Latinos, immigrants, whose firms have nothing to gain financially from the state program. It is all the more regrettable since those who did file claims greatly appreciated this crucial source of income. For them, more so than for high-income workers, the state program, including its non-economic benefits such as the ability to organize child care, made a huge difference.
- 11 The authors draw three lessons from the California experience. First, the strategic approach involving a broad based coalition is a winning one, and, given the public support for the paid leave issue, it can overcome the opposition of the business lobby. It can and should be adopted in states where elected officials are receptive to advocates’ agenda. Second, once the legislation is adopted, employers easily adjust to it, which stands the economic argument against it on its head. Third, the California program should be made more accessible to low-wage workers through improved awareness, job protection provisions, and a higher wage replacement rate.
- 12 In their conclusion, Milkman and Appelbaum make the case for an efficient, fairly easy to implement national program. They recommend looking to the social insurance model pioneered by California, but also to the states that have a Temporary Disability Insurance System. A similar universal program could be set up at the federal level with individuals paying into a separate trust fund administered by the existing Social Security Administration, establishing a floor while allowing employers to provide more generous benefits.
- 13 This first full length account of state-level policies on paid leave (which incorporates some previously published materials) fills a void in the literature and should be a precious resource to students of work-family policy at a time when momentum is building nationwide for such benefits. Although the focus of the book is California, a brief account of the New Jersey campaign—to which the authors contributed their expertise—would have been appreciated, given the scarcity of materials on the subject. Indeed, the California campaign’s successful strategy did set up a template for other states and cities to follow, even if the style and messaging had to be adapted to local

conditions. Several municipalities have since adopted paid sick days ordinances. After New Jersey (2008), Rhode Island adopted paid leave insurance in 2013, improving on the California and New Jersey model by adding job protection, thus helping to promote the “state as policy laboratory” theory according to which social experimentation in progressive states is then gradually extended to others. Early 20th century minimum wage laws are often cited in support of that approach to social reform. However, although campaigns are active in other regions, diffusion across the nation to states which, unlike the innovators, do not have a pre-existing TDI structure, will prove a tall order,³ and nothing short of congressional action will help ensure equal access to basic paid leave policies to all American families. The Family Act, introduced by Democratic lawmakers in Congress in December 2013⁴ is a step in the right direction. But if the past is any guide, advocates must brace themselves for tough battles before the United States moves closer to other industrialized countries in its support for families. The book title’s sobering message invites them to keep up the fight and complete the work.

NOTES

1. It entitles workers to up to 12 weeks of job protected leave for family or medical reasons if the employee works at a location where the employer has at least 50 employees within 75 miles. It applies to workers who have worked at least 1,250 hours in a year, thus excluding part-time workers.
 2. In addition to California, four states—Rhode Island, New York, New Jersey, and Hawaii—currently have such programs, adopted between 1942 and 1969.
 3. Washington passed a paid family leave law in 2007, which was never implemented for lack of a funding mechanism.
 4. Designed on the model recommended by Milkman and Appelbaum as well as by the progressive Center for American Progress, the Family and Medical Insurance Leave Act would provide paid family and sick leave to all workers who are eligible to Social Security disability benefits. It would be financed by payroll contributions from employers and employees and be administered through the Social Security Administration. Under the bill, workers would receive up to 12 weeks of paid leave.
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